Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ FAX (860) 278-2957 ❖ RPodolsky@LARCC.org

Affordable Housing Appeals Procedure (C.G.S. 8-30g)

Housing Committee Public Hearing
Testimony of Raphael L. Podolsky

Recommended Legislative action: **REJECT AMENDMENTS TO 8-30g**

The Affordable Housing Appeals Procedure (C.G.S. 8-30g) is a critically important affordable housing anti-exclusionary zoning and fair housing law which helps make it possible to build long-term affordable housing in suburban and outlying towns. Its existence is essential to the implementation of municipal obligations under the Zoning Enabling Act (C.G.S. 8-2), which requires that all municipal zoning regulations "encourage the development of housing opportunities, including opportunities for multifamily dwellings" for residents of the town and the region and that they "promote housing choice and economic diversity in housing, including housing for both low and moderate income households" *[emphasis added]*. Since its original adoption in 1989, the Act has undergone many amendments, including a full review and revision in 2000 based upon the report of the Blue Ribbon Commission on Affordable Housing. The changes contained in P.A. 00-206 strengthened the affordability requirements of the Act, improved the information available to towns, and rewarded towns in which a substantial amount of new affordable housing was developed with a moratorium under the Act.

The Affordable Housing Appeals Procedure has proven itself repeatedly as a good, balanced law which helps reduce the negative impact of exclusionary zoning. At the same time, when a zoning commission has good reason for turning down an affordable housing application, the commission's decision will be upheld by the courts. Commissions in fact win almost a third of appeals under the Act. In addition, the Act has made zoning commissions more willing to give serious consideration to affordable housing applications and has, in some cases, given formerly resistant towns the incentive necessary to take the initiative and affirmatively seek out ways to promote the development of affordable housing within their communities.

While it is always possible to improve any statute, all bills before the Housing Committee propose changes that would either weaken the Act in one way or another -- from outright repeal to changes (some subtle, some obvious) that undercut its ability to function effectively or are unnecessary because already addressed by 8-30g. The cutbacks in state assistance for housing that have occurred in recent years and are likely to continue into the future make the preservation of 8-30g as a strong statute all the more important. I urge you to leave the statute alone and let it continue to operate at full strength.

Note: This testimony applies to the following 30 bills: 443, 5058, 5059, 5060, 5061, 5063, 5067, 5155, 5220, 5314, 5315, 5428, 5429, 5430, 5501, 5620, 5624, 5625, 5626, 6115, 6116, 6117, 6118, 6119, 6120, 6121, 6122, 6123, 6124, 6293

Connecticut General Assembly

HOUSING COMMITTEE

February 8, 2013

REASONS TO PRESERVE GENERAL STATUTES § 8-30g, THE AFFORDABLE HOUSING LAND USE APPEALS ACT

This statement has been endorsed by the Connecticut Housing Coalition, the Partnership for Strong Communities, the Connecticut Fair Housing Center, the Home Builders and Remodelers Association of Connecticut, the Legal Assistance Resource Center of Connecticut, and the Connecticut Association of Realtors.

1. **Housing Production**. The Affordable Housing Land Use Appeals Act, General Statutes § 8-30g, was adopted in 1990 at the recommendation of a Blue Ribbon Commission that documented municipal land use commission resistance to lower cost housing proposals, despite rapidly escalating prices that were putting most of Connecticut's homes out of reach of moderate and low income families. During its 22 years as Connecticut law, § 8-30g has spurred the approval and construction or preservation of workforce housing that would not otherwise have occurred. Current counts, based on and backed by the DECD "Ten Percent List," show, in the towns currently not exempt from § 8-30g, 5,481 "Deed Restricted" housing units that are subject to maximum price or rent restrictions that satisfy § 8-30g standards. This total does not include 832 units in Danbury and Norwalk, which are now exempt from § 8-30g but have been subject to it in the past. Section 8-30g has also spurred creation of "assisted housing," meaning units built with some form of public subsidy. Although we have not, for this update, done an exact statewide calculation of what "governmentally assisted" units are attributable to § 8-30g, the current statewide (all 169 towns) stock of assisted units has increased by about 24,000 since 1992. In addition, since the predominant model under § 8-30g has been "set aside" development, in which 30 percent (originally 20 percent, moved to 25 percent in 1995 and 30 percent in 2000) of the total units are price-restricted and the rest are market-rate, the affordable units created due to § 8-30g have brought with them the construction of several thousand market-priced but less expensive homes.

2. **Success Stories**. Across the state, there are § 8-30g success stories – nicely-designed, well-constructed, appropriately-situated, mixed-income developments, such as: Olde Oak Village in Wallingford; Old Farms Crossing in Avon; Trumbull Townhomes; AvalonBay in Wilton (two developments), Darien, Orange, and Trumbull; and West Hartford Interfaith Housing / Flagg Road in West Hartford. In several towns, multi-family rental developments approved under § 8-30g are among the largest "tax positive" properties on municipal Grand Lists.

3. **Clear Standards**. After 22 years, the standards used for evaluation of § 8-30g proposals are well-established and clear to judges, municipalities, land use boards, applicants, and consultants.

4. **Documented Denial Reasons Upheld In Court**. *Whenever a municipal zoning commission has effectively documented a substantial health or safety reason to deny an affordable housing proposal, such as a lack of sewage disposal capacity, water supply, water quality impacts, or emergency vehicle access, the courts have upheld that denial.* The courts have also upheld denials when other grounds have been compelling, such as open space preservation in a Glastonbury case. In the most recent § 8-30g decisions, the courts have reduced development proposals due to water quality and environmental concerns and remanded the cases for further site planning.

5. **Protection Of Municipalities**. In 2000, the statute was amended to provide greater procedural protections for towns and to assure that § 8-30g developments provide a level of affordability not otherwise available in the communities covered by the statute. The amendments have worked as intended.

6. **Workforce Housing Need: Never Greater**. The need for housing that is affordable has never been greater. The declines in the cost of housing over the past four years have not come close to offsetting the 66 percent increase in prices from 2000-2007, and the cost of rental housing is rising while the supply is shrinking. Census figures show a sharp increase in demand for rental housing, while economic and demographic factors – the large increase in 65+ population, the need to attract young professionals and workers, the high education debt of Millenials, the lack of savings of retirees and older workers, the high costs of gasoline and heating oil – all point to an increasing demand for smaller, denser, more affordable, energy-efficient, walkable and, if possible, transit-proximate housing. Connecticut has lost more 25-34-year-old workforce than all but two states since 1990. We have lagged the nation in multi-family construction in recent years, and we are 50th in units built per capita in 2011 and the 2002-2011 decade. This lack of supply has kept our rental prices 6th highest in the nation and our home values 8th. Numerous, recent studies have documented that the need for lower-cost, multi-family rental, along with record foreclosures, have led to new pressures on family homelessness. The reasons for which § 8-30g was adopted in 1989-90 are as compelling today as they were then, and even more so.

7. **Approvals And Settlements**. In the past five years, a growing percentage of § 8-30g applications has been approved without a court appeal, or has been settled during an appeal process. Examples include Green Falls in North Stonington; Sussex Place West in Madison; Governor's House in Ridgefield; Garden Homes in Darien; Hillcrest Orchards in Southington; Meadowood in Simsbury; Metro Realty / Deming Road in Berlin; AvalonBay in Wilton; Pelletier in East Hampton; Westwoods LLC in Hamden; and Garden Homes / Fairchild Avenue in Fairfield.

8. **Smart Growth Track Record**. Section § 8-30g developments, because of their location, density, and use of existing infrastructure, provide good examples of consistency with smart growth principles.

9. **Municipal Services And Fiscal Impacts**. In many cases, objectors to § 8-30g applications have predicted increases in crime, taxes, traffic, pollution, etc. These dire predictions have *not* come to pass. In fact, municipal leaders – First Selectmen, Police Chiefs, School Superintendents, and Town Planners – often praise § 8-30g developments as a social and fiscal benefit.

10. **Moratorium Provisions**. Moratorium provisions are working as intended. The incentive point system, as well as the counting of accessory apartments and manufactured homes, have provided incentives that have been utilized. Trumbull, Berlin, and Darien have achieved multi-year moratoriums based on approving § 8-30g developments and several municipalities are within striking distance of doing so. Berlin is working to document its second moratorium.

11. **Wetlands Protection**. Some have contended that § 8-30g compromises wetlands protection. To the contrary, § 8-30g does not apply to wetlands agencies. In fact, in 2008, three § 8-30g proposals were denied due to wetlands encroachments and the denials were upheld by the courts, applying existing wetlands law.

12. **Reducing Economic And Racial Barriers**. One of § 8-30g's original purposes was to reduce economic and racial barriers. While these results are difficult to measure, there is no doubt that § 8-30g has resulted in greater housing opportunities for lower income households in suburban communities.

13. **A Boost For Incentive Housing Zones**. In the past year, the Incentive Housing Zone ("IHZ") program has turned a corner, with OPM finally dispensing incentive money. There is no doubt that municipalities are turning to IHZs in part due to the existence of § 8-30g. To gut or repeal § 8-30g now would undermine the IHZ program.

14. **Pending Applications**. Section 8-30g applications, most involving 50 or fewer units, are pending (at local zoning commission or on appeal) in: Easton, Lisbon, New Canaan, East Lyme, East Haven, Redding, Bethel, Sterling, Ledyard, and Oxford.

Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ FAX (860) 278-2957 ❖ Rpodolsky@LARCC.org

A Brief Summary of the Affordable Housing Appeals Procedure

September 24, 2012

What is the Affordable Housing Appeals Procedure?

It is an anti-exclusionary zoning statute designed to promote the construction of low- and moderate-income housing in suburban and outlying towns. It is sometimes referred to as the "Affordable Housing Land Use Appeals Act" and is also known by its statutory citation of Section 8-30g. It was adopted in 1989 upon the recommendation of the Blue Ribbon Commission on Housing and was revised in 2000 in accordance with the recommendations of a second study commission, known as the Blue Ribbon Commission on Affordable Housing. The act is a "builder's remedy," in that it ordinarily comes into play only when someone proposes to build a specific housing development and the local zoning or planning commission either rejects the application or imposes conditions which make the deed-restricted units uneconomic.

How does the act change zoning law?

It operates by changing the burden of proof on a zoning appeal, if the housing proposed to be built satisfies the affordability standards of the act. In general, the burden in an appeal from a zoning or planning commission is on the applicant to show that the commission has acted illegally or arbitrarily. In cases to which the Affordable Housing Appeals Procedure applies, the burden of proof is shifted to the commission to show four things:

- That the commission's decision is supported by sufficient evidence in the record;
- That the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider;
- That those public interests clearly outweigh the need for affordable housing, and
- That those public interests cannot be protected by reasonable changes to the proposed development.

If the commission offers such changes, the act permits the developer to submit a revised plan responding to those changes.

It thus follows from the act that the mere fact that the proposal fails to comply with the zone is not a sufficient basis to sustain a denial under the act. Otherwise a town could simply use density limits in its zoning ordinances to exclude entirely or to limit the ability to create low-cost housing in the town. The act instead requires the commission to show why the public interests which underlie the zone clearly outweigh the need for affordable housing.

(continued on reverse side.....)

To what towns does the act apply?

The act excludes towns in which an exceptionally large percentage of the dwelling units are either government-assisted or deed-restricted. The percentage used is 10% of the town's dwelling units, a percentage which was taken from a similar Massachusetts law. The practical effect is to exclude from the act approximately 30 towns which are most heavily impacted by government-assisted housing. The 10% threshold is neither a goal nor a mandate -- it simply determines which towns are subject to the act and which are not. The Department of Economic and Community Development prepares the exempt list annually. The most recent list exempts 29 towns. In addition, since 2000 the act has had a provision by which non-exempt towns in which a substantial amount of qualifying housing has been built in recent years can obtain a four-year moratorium from application of the act. The moratorium formula gives extra weight to rental housing and to housing targeted to families with relatively lower incomes (e.g., under 60% of median income rather than under 80% of median income). Trumbull has had two moratoriums but the second moratorium has expired. At present, Berlin is in its second moratorium and Darien is in its first.

Who is eligible to use the act?

The act may be used by either non-profit developers or for-profit developers. The proposed development must be either "assisted housing" or a "set-aside development." "Assisted housing" is a development that is built using state, federal, or local governmental assistance. Most developments built by non-profit developers are assisted housing. Developments may also use federal low-income tax credits, the CHFA housing tax credit program, or other governmental assistance programs which are open to for-profit developers. A "set-aside development" is one in which a certain percentage of the units is deed-restricted to assure their affordability. Because no governmental assistance is involved, the market rate units must be priced so as to provide an internal subsidy to the deed-restricted units. Since the act was first adopted, the affordability requirements have been tightened. At present, for a proposed development to meet the act's deed restriction requirements, the following conditions must be met:

- At least 15% of the units must be restricted to households with incomes below 60% of state median income (or area median income, if that is lower).
- An additional 15% of the units must be restricted to households with incomes below 80% of state median income (or area median income, if that is lower). In other words, at least 30% of the units in the development must be deed-restricted.
- The restrictions must last for at least 40 years.

The deed-restricted units must be priced so that the total housing cost for the occupants, including utilities, will not exceed 30% of the income reflected in the appropriate category. If the deed-restricted units are rental units, their price must also not exceed 100% of the Section 8 fair market rent (for 60% units) or 120% of the Section 8 fair market rent (for 80% units).

Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ FAX (860) 278-2957 ❖ RPodolsky@LARCC.org

Summary of major changes made to Affordable Housing Appeals Procedure by P.A. 00-206

September 24, 2012

In 1999, the General Assembly created a broad-based Blue Ribbon Commission on Affordable Housing, which reviewed the Affordable Housing Appeals Procedure (C.G.S. 8-30g) and presented a package of recommendations to the General Assembly, most of which were adopted as part of P.A. 00-206. They resulted in significant changes in the act that were supported both by housing advocates and by municipalities. The three major changes were:

- Greater affordability of deed-restricted units: P.A. 00-206 significantly tightened the affordability standards which a developer must meet to use C.G.S. 8-30g. This was win-win, because it reduces the number of C.G.S. 8-30g applications but assures that the ones which are submitted will provide housing of greater affordability. In particular, the act:
    - Raised the percentage of units which must be deed-restricted from 25% to 30% of all units.
    - Raised the proportion of the deed-restricted units which must be for households with incomes below 60% of median from 10% of all units to 15% of all units, i.e., to half of the deed-restricted units. The remaining deed-restricted units must serve households below 80% of median income.
    - Increased the duration of the affordability restrictions from 30 years to 40 years.
    - Restricted maximum rents for below-60% units to 100% of the Section 8 fair market rents (FMRs) and for below-80% units to 120% of the Section 8 FMRs. This results in significant lowering of maximum rents in many parts of the state, as compared with the pre-2000 statute.
    - Restricted maximum sales prices for deed-restricted ownership units by requiring DECD to set a maximum down payment (DECD set that maximum at 20% of the purchase price).

- Greater information to the towns: P.A. 00-206 allowed towns to require more information from developers in the application process. In particular, it required the developer to provide a detailed affordability plan, including draft zoning regulations, deed restrictions, marketing plans, construction sequences, etc. It required the developer to designate an entity to enforce the affordability restrictions. It allowed towns to require a conceptual site plan. It clarified the town's authority to use its zoning enforcement powers to assure that an affordability plan is complied with.

- Moratorium on applications: P.A. 00-206 allowed towns in which a substantial amount of qualifying affordable housing is built to receive a three-year (subsequently amended to four-year) moratorium from applications under the act. A moratorium requires "housing equivalent-points" equal to 2% of the town's housing stock since the effective date of C.G.S. 8-30g in 1990. Cumulative bonus points are given for rental housing (an extra half point) and for units targeted to below-60% households (an extra half point), so the number of affordable units produced can equal less than 2% of the town's units. Fractional bonus points are given for the market-rate units in an affordable housing development. Because a moratorium is attainable, the act encourages towns to be proactive and to seek affordable housing development which maximizes the number of points received, as has in fact been done in Berlin and Trumbull. At present, Berlin and Trumbull both have moratoriums, and Trumbull previously had eight years of moratorium.

– Prepared by Raphael L. Podolsky

Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ FAX (860) 278-2957 ❖ RPodolsky@LARCC.org

Summary of moratorium provisions of C.G.S. 8-30g

September 24, 2012

The four-year moratorium is designed to encourage towns subject to C.G.S. 8-30g to promote the development of new rental housing for families and to target that housing to households with incomes below 60% of median. It is equally available to all towns in which fewer than 10% of the housing units are government-subsidized or deed-restricted, including towns which are well below the 10% level.

How many housing units are required for a moratorium?

A four-year moratorium on applications under C.G.S. 8-30g is available when newly constructed or newly deed-restricted units generate "housing equivalent unit points" equal to 2% of the town's housing stock (but not less than 75 such points). Any such units created after July 1, 1990 (when 8-30g became effective) may be counted. Eligible units must be restricted to households with incomes below 80% of median income. Each such non-elderly dwelling unit counts as one "point," except that the value of a dwelling unit is increased by an additional half point if:

* The unit is rental rather than ownership, or
* The unit is restricted to households below 60% of median income, or
* The unit is restricted to households below 40% of median income.

These extra half-points are cumulative. For example, a non-elderly rental unit counts as 2 unit points if restricted to a household below 60% of median income and 2.5 unit points if restricted to a household below 40% of median income. Units for elderly persons count as half a point. Market rate units in an 8-30g development count as one-fourth of a point. Thus, a 50-unit government-assisted family rental development for households below 60% of median income will count as 100 points. A 50-unit complex under 8-30g in which 30% of the units are deed-restricted in accordance with 8-30g will count as 70 points if rental and 55 points if ownership.

A moratorium does not apply to assisted-housing developments containing 40 or fewer units or in which 95% or more of the units are for households below 60% of median income.

Can a moratorium be renewed?

If, during the course of a moratorium, a town generates sufficient additional housing equivalent points to qualify for a moratorium (2% of the housing stock but not less than 75 points), the moratorium will be extended for an additional four years. Qualifying units in the pipeline but not yet completed at the time of the first moratorium and qualifying units built or deed-restricted during the first moratorium may be counted toward a second moratorium.

■ Prepared by Raphael L. Podolsky

Moratorium point structure – housing unit-equivalent points

Subsection (L) of 8-30g
September 24, 2012

Definition:

An affordable housing unit is a newly-constructed unit in an affordable housing development or a newly deed-restricted unit that is not aged-restricted.. Occupancy of the unit must be restricted to persons with incomes below 80% of median income, and the restriction must continue for at least 40 years. "Median" income means the lower of area median income or statewide median income.

The base value of an affordable housing unit is 1 housing unit-equivalent point.

Add the following points:

– Rental housing	½ point
– Units restricted to below-60% of median income households	½ point
-- Units restricted to below-40% of median income households	½ point
– Age-restricted (i.e., elderly) affordable units	½ point
– Market rate units in a set-aside development	¼ point

Eligibility for four-year moratorium:

- For a town to qualify for an exemption, it must demonstrate housing unit-equivalent points equal to 2% of the number of housing units in the town (based on the most recent census), but no less than 75 points.
- Units must have been built or deed-restricted since July 1, 1990, when the Act took effect.
- Units are not counted until they are completed, i.e., receive a certificate of occupancy.
- Units not counted in a first moratorium or built after the start of a moratorium can be applied to a second moratorium.

Housing exempt from moratorium:

-- "Assisted housing" (i.e., housing built with government assistance) THAT IS EITHER
  - Small development: It contains 40 or fewer units OR
  - Highly income-targeted development: 95% of the units are restricted to households below 60% of median income

Affordability requirements for 8-30g deed-restricted rental units -- 2012

Maximum 8-30g monthly apartment rent by region

(including heat and utilities)

	60% *(15% of units)*		80% *(15% of units)*	
	2-BR	3-BR	2-BR	3-BR
Waterbury	$ 919	$1062	$1226	$1416
Windham County	$ 971	$1122	$1198	$1496
New London-Norwich	$1139	$1317	$1374	$1681
New Haven-Meriden	$1146	$1324	$1528	$1766
Bridgeport	$1176	$1359	$1532	$1812
Hartford	$1038	$1247	$1246	$1496
Litchfield County	$1063	$1365	$1276	$1638
Milford-Ansonia	$1204	$1383	$1558	$1855
Southern Middlesex Co.	$1080	$1383	$1296	$1663
Colchester-Lebanon	$1126	$1347	$1351	$1616
Danbury	$1204	$1383	$1606	$1855
Stanford-Norwalk	$1204	$1383	$1606	$1855

Median income by region for purposes of 8-30g *(family of four)*

	Lower of area or state median		
	60%	80%	Median
Waterbury	$40,860	$54,480	$ 68,100
Windham County	$43,140	$57,520	$ 71,900
New London-Norwich	$50,640	$67,520	$ 84,400
New Haven-Meriden	$50,940	$67,920	$ 84,900
Bridgeport	$52,260	$69,680	$ 87,100
Hartford	$52,620	$70,160	$ 87,700
Statewide	**$53,520**	**$71,360**	**$ 89,200**
Litchfield County	$53,520	$71,360	$ 89,900
Milford-Ansonia	$53,520	$71,360	$ 92,200
Southern Middlesex Co.	$53,520	$71,360	$ 98,600
Colchester-Lebanon	$53,520	$71,360	$100,100
Danbury	$53,520	$71,360	$110,400
Stamford-Norwalk	$53,520	$71,360	$128,400

Explanatory notes:

(1) 30% of 8-30g units must be set aside as income-restricted units. 15% of the units must serve households below 60% of median. An additional 15% must serve households below 80% of median.

(2) "Median income" for the purpose of 8-30g is the lower of area median or statewide median. At present, the statewide median (rather than the area median) applies in the Litchfield, Milford-Ansonia, Southern Middlesex County, Colchester-Lebanon, Danbury, and Stamford-Norwalk regions.

(3) The maximum rent that can be charged for an 8-30g set-aside rental unit for a household below 60% of median is calculated as the lower of (a) 30% of the income of a household at 60% of median or (b) the Section 8 fair market rent for the region. The maximum rent for a household below 80% of median is the lower of (a) 30% of the income of a household at 80% of median or (b) 120% of the Section 8 fair market rent for the region.

(4) The maximum rental charge under 8-30g includes heat, electricity, gas, and water. If some of those items are not included in the rent, the rental maximum for that unit must be lowered by a fair estimate of the items that the tenant must pay for separately.

-- Prepared by Raphael L. Podolsky, Sept. 24, 2012

Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ cell (860) 836-6355 ❖ FAX (860) 278-2957 ❖ RPodolsky@LARCC.org

Common Myths about the Affordable Housing Appeals Procedure

September 24, 2012

Myth: The act has been substantially unchanged since its original adoption in 1989.
Fact: A Blue Ribbon Commission on Affordable Housing was created in 1999 to review the act and produced extensive recommendations, which were adopted by the General Assembly in 2000. Those changes addressed numerous municipal concerns. In particular, they significantly increased the affordability requirements of housing built under the act, expanded the information available to towns, clarified the mechanisms to enforce affordability, and authorized moratoriums from the act for towns in which substantial affordable housing qualifying under the act had been built. Criticisms based on pre-2000 applications should not be assumed to still apply to post-2000 applications.

Myth: The act requires towns to have 10% of their housing units affordable.
Fact: There is no such requirement. The 10% exemption from the act, which was borrowed from Massachusetts' version of this statute, is a way to exempt towns which already have a large amount of government-assisted or deed-restricted housing. There is no obligation of any town to reach the 10% level and no state goal expecting towns to do so. It is instead merely a mechanism to determine which towns are subject to the act.

Myth: Towns that are well below the 10% exemption are locked into the act forever and can never get out.
Fact: The 2000 amendments, as subsequently modified, allow towns with a high level of affordable housing construction to obtain a four-year moratorium from applications under the act. The moratorium is based on "housing unit-equivalent points" which give bonuses for rental housing and for housing targeted to households below 60% of median income, so that many units will count for more than one point. A town, no matter how far below the 10% exemption, can get a moratorium by earning housing unit-equivalent points equal to 2% of its housing stock. At present, Berlin is in its second moratorium and Darien is in its first. Trumbull has had two moratoriums, but the most recent one has expired.

Myth: The moratorium does not allocate points fairly.
Fact: The moratorium is carefully designed to encourage towns to make provision for low and moderate income family rental housing, which is the type of affordable housing that is most needed yet least likely to be approved by suburban towns. The moratorium uses "bonus" points to give extra credit for such housing. Thus, family housing receives more points than elderly housing and an extra half point is added for rental housing, units for households below 60% of median income, and units for households below 40% of median income. Because of the bonus point system, one way that a town can move quickly toward a moratorium is to work with a non-profit

developer for the development of family rental units, all of which will be affordable and many of which will be for households below 60% of median income.

Myth: The units built under the act are not affordable.

Fact: The 2000 amendments increased the affordability requirements to assure that developments built under the act will always have a substantial number of units that are priced well below the typical units in the town's housing market and will be guaranteed affordable for an extended period of time. In an 8-30g set-aside development, at least 30% of the units must be deed-restricted for at least 40 years. Half of those units must be for households below 60% of median income. Median income is the lower of the median for the area or for the state. The application of the statewide median in lower Fairfield County has had a significant impact in producing greater affordability. The cost of rental units cannot exceed a formula based on Section 8 fair market rents. The cost of ownership units must be based on realistic estimates of interest rates and the cost of insurance, taxes, heat, and utilities. They cannot assume a down payment of more than 20%.

Myth: Hardly any affordable housing units have been built under the act.

Fact: A 2006 analysis of construction under the act estimated that at least 3,300 affordable units had been built as of that date. It is believed that the number is now closer to 5,000. In addition, there is reason to believe that many other affordable units have been approved by municipalities because of the existence of the act.

Myth: Towns can defend an affordable housing appeal only if the town can prove that the proposal will have an adverse impact on health or safety.

Fact: The act requires the court to balance housing need against any "substantial public interests in health, safety, or other matters which the commission may legally consider" *[emphasis added]*. Commissions can, as a result, defend a decision on any ground that is a proper basis for a zoning or planning commission decision. Those grounds are contained primarily in C.G.S. 8-2. The courts have, in 8-30g cases, sustained commission decisions on such non-health and safety grounds as open space and the unique architectural characteristics of the area.

Myth: The act prevents consideration of environmental concerns.

Fact: To the contrary, the act requires applicants for 8-30g developments to obtain from environmental agencies with jurisdiction the same environmental approvals as are required for any other development. The act does not apply to or affect the standards of the decisions of wetlands or conservation commissions. It does not apply to the decisions of historic district commissions or similar entities. It does not apply to requirements, whether by permit or otherwise, imposed by state agencies, such as the Department of Environmental Protection, the Department of Public Health, or the State Traffic Commission. It applies only to decisions of zoning and planning commissions. As a result, even if a developer could successfully challenge a zoning or planning denial through 8-30g, it could not build anything without other necessary approvals. Those approvals must be obtained using the same legal standards that apply to all other applications to those bodies. In addition, to the extent that a planning or zoning commission can legally consider environmental factors in its own decision, the court may take them into consideration in the

weighing process in an appeal under 8-30g.

Myth: The Affordable Housing Appeals Procedure is not adequate as an affordable housing policy for the Connecticut.

Fact: The act was never intended to substitute for a state housing policy. It is one very essential piece of a policy, but it is not supposed to be the whole policy. At the time it was adopted, the state created two new municipal incentive programs – the Connecticut Housing Partnership and the Region Fair Housing Compact program – both of which came with financial incentives to participating towns. The state was also at that time bonding more than $100 million per year for grants and reduced-rate loans to promote affordable housing development. Until this year, the funding for all of those programs had disappeared or been radically reduced, and the two incentive programs have been dormant for years. The act is most effective when it is used in conjunction with state programming that encourages towns to act voluntarily, such as the recently created HOME Connecticut program.

Myth: The only people who use the act are for-profit developers.

Fact: The act is available to both non-profit and for-profit developers. The first case under 8-30g to reach the Supreme Court was brought by a local interfaith non-profit in West Hartford. The reduction of the state's financial commitment to affordable housing in the 1990's has been the principal factor which has limited more active application by the non-profit community.

Myth: Developers who take appeals under the act always win.

Fact: Taking an appeal is far from an automatic win for an applicant. Towns have won almost one-third of appeals. The record is clear that, when a town shows strong reasons for a denial, it usually wins the appeal.

Myth: The act unfairly counts only government-assisted and deed-restricted units as affordable.

Fact: The 10% count of units to determine exemption from the act does not purport to be a count of all housing units in the town that are "affordable." It is a count of government-assisted and deed-restricted units. In virtually every town, 10% of the housing is affordable in the lay sense of the word. Apart from practical problems in determining the affordability of market-rate units (affordability determinations require information as to both the cost of the housing and the income of the occupants), the inclusion of market-rate units would require a substantially different percentage to be used for the exemption – probably in the 80% range. The fact is that the 10% exemption reasonably identifies those towns in which application of the act is unnecessary. There are now 29 towns which are exempt from the act.

Myth: The act does not recognize accessory apartments.

Fact: The act recognizes all government-assisted and deed-restricted units. Accessory apartments subject to ten-year deed restrictions are counted toward the 10% exemption. It is important to recognize, however, that accessory apartments with short-term deed restrictions (unlike the 40-year deed restrictions required of developers under the act) may well not provide any true affordable housing at all, because many of them are not offered for rent on the housing market. It may be

very helpful to a family to have a small accessory unit for a family member who might otherwise simply live in the house; but, unless the unit is advertised and made available generally to the public, it has a minimal impact on a town's housing market.

Myth: The act allows developers to use the threat of the act to get other concessions from zoning commissions.

Fact: The 2000 amendments have converted such threats to little more than posturing. The enhanced affordability requirements established in 2000, which now require a significant internal subsidy between the market-rate and the deed-restricted units, have the practical effect of limiting the profitability of an 8-30g development. Developers who are not serious about producing affordable housing are not likely to find its development sufficiently attractive financially. A town which thinks it is being leveraged should simply tell the developer to build affordable housing and not allow the threat of affordable housing (which is a benefit to the town, not a harm) to lead the town to approve some other kind of development which it does not want.

Myth: Zoning arises from a town's home rule powers.

Fact: The court cases are clear that all zoning power is vested in the state, not in the towns. Zoning is delegated to towns under strict limitations, many of which are contained in the Zoning Enabling Act (Section 8-2 of the General Statutes). For example, under Section 8-2, zoning ordinances are required to promote economic diversity in housing, including housing for both moderate and low income households, are required to encourage opportunities for multi-family dwellings, and are required to encourage such opportunities for residents of the region in which the town is located and not merely for residents of the town. Even before the Affordable Housing Appeals Procedure was adopted, the Connecticut Supreme Court had ruled that it is illegal for towns to use their zoning powers to exclude low-cost housing. Section 8-30g is one mechanism for implementing the mandatory requirements of zoning contained in Section 8-2 but often ignored by the towns.

Myth: A developer can designate the highest quality units as market-rate units and the lowest quality units as set-aside units.

Fact: The courts have held that market-rate and set-aside units must be substantially similar in an 8-30g development.

– Prepared by Raphael L. Podolsky

Excerpts from

Connecticut Zoning Enabling Act

Connecticut General Statutes Section 8-2

Current through January 1, 2010

Such regulations [zoning regulations] shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the housing plan prepared pursuant to section 8-37t [state Five-Year Housing Plan] and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26.

AFFORDABLE HOUSING APPEALS PROCEDURE AMENDMENTS – 2013

Why all proposed amendments are either undesirable or unnecessary

Repeals 8-30g

H.B. 5058 Repeals 8-30g — Miller

C.G.S. 8-30g is a critical part of state affordable housing law that helps counter exclusionary zoning, implements the Zoning Enabling Act's requirement that zoning encourage diverse types of housing for both low and moderate income residents, and promotes the production of workforce housing in suburban and outlying towns.

Increases affordability to the point that it will eliminate applications by non-subsidized developers

H.B. 5060 Requires deeds be in perpetuity — Lavielle

H.B. 5430 Requires deeds be in perpetuity — Wood

H.B. 5428 Requires all restricted units to be below 60% of median — Wood

Requiring that all restricted units be in-perpetuity or serve under-60% households will effectively limit the Act to non-profit developers and exclude the for-profit unsubsidized developers who have produced the large majority of units under the Act. There is a delicate balance between maximizing affordability and getting the private sector to produce units. The Year 2000 revision enhanced affordability requirements to 30% of the units for 40 years, with half of the restricted units for households below 60% of median income (which is the lower of area or state median), subject to an additional restrictive overlay based on Section 8 rent maximums. This affordability requirement is as far as we can reasonably go without shutting down development under the Act.

Exempts more towns

The Act uses the Massachusetts standard by exempting towns in which more than 10% of the units are government-assisted (or deed-restricted). This standard has consistently exempted about 30 Connecticut towns, which are the ones most impacted by government-assisted housing. A review of those towns shows that this tool adequately identifies those towns containing the least affordable housing.

H.B. 5061 Exempts towns based on minority student population — Miller

H.B. 6116 Exempts towns based on number of free school lunches — D'Agostino

The existing statute is based directly on existing government-assisted and deed-restricted housing units. This is an adequate basis for determining exemption, and other indicators are not needed.

H.B. 5155 Counts senior housing — Lavielle

H.B. 6123 Counts senior housing — Frey

Senior housing is already counted if it is government-assisted or deed-restricted. Housing without long-term affordability restrictions does not belong in the 10% count. If it were included, the 10% standard would have to be adjusted upward.

H.B. 5220 Makes exemption "flexible" by town, counts more accessory apartments, uses town median income — Lavielle

Some fixed objective standard is needed for the Act to function. The 10% exemption has proved to be a fair indicator of which towns should be exempt. Accessory apartments are counted if they are subject to long-term deed restrictions. The definition is adequate. The lower of statewide or area median is used to assure that restricted units, even in high-cost lower Fairfield County, will serve households of

low and moderate income. The use of town median, especially in lower Fairfield County, will result in the restricted units having minimal affordability.

H.B. 5314 Exempts towns under 15,000 Shaban

Under the Zoning Enabling Act, each town, regardless of size, has a duty to encourage the development of housing opportunities for multifamily dwellings for residents of the entire region to "promote housing choice and economic diversity" including housing for "both low and moderate income households." All towns are subject to these requirements under C.G.S. 8-2 and none should be exempt from 8-30g.

H.B. 5429 Reduces to 9% for towns with senior housing Wood

H.B. 6120 Reduces to 9% for towns with senior housing Frey

The 10% standard includes government-assisted and deed-restricted senior housing. The greatest need, and the area in which towns are most resistant, is family housing, not senior housing. In light of the purposes of the Act, it does not make policy sense to reduce the 10% standard based on senior housing.

H.B. 5620 Exempts towns which collaborate with other towns Miller

Towns should not be exempt from 8-30g merely because they collaborate in planning. Under the Act, towns in which sufficient housing is actually produced are exempt. Towns can also obtain a moratorium if sufficient new affordable units are developed within the town. The moratorium, however, is appropriately based on units actually produced and not merely on a plan or even a good faith intention to encourage production.

<u>Reduces moratorium requirements</u>

H.B. 5063 Counts all housing units under $100,000 Miller

The purpose of the moratorium is to incentivize towns to encourage the development of housing which would meet the standards of 8-30g. Those standards require assurances of long-term affordability. The current price of a house is inherently temporary, and we have gone through periods of rapid increases in housing prices that have made unrestricted units highly unaffordable. To count shut units would be to give a moratorium based on housing units that do not satisfy the basic requirements of the Act.

H.B. 5626 Increases point value of elderly housing Wood/Steinberg/Kupchick/Hwang

The moratorium provisions are carefully designed to incentivize the types of affordable housing to which towns are least likely to be receptive. That is family housing, not elderly housing. Similarly, towns are less likely to be receptive to rental housing (compared to ownership housing) and to housing targeted to relatively lower income occupants (compared to higher income housing). The Act thus adds half points toward a moratorium for each rental unit and for units for households below 60% of median income. It gives only a half point for elderly housing because such housing is not least likely to be approved. This is fully appropriate to the purposes of the Act and should not be changed.

H.B. 6119 Increases moratorium to five years Frey

A four-year moratorium is adequate time for towns that are seriously interested in promoting affordable housing growth. Trumbull has had a second moratorium and Berlin is about to begin one, so it is clear that this can be done.

Imposes discriminatory or burdensome requirements

H.B. 5624 Requires wider sidewalks and 1/6 of affordable units to be accessible Miller

H.B. 6122 Requires wider sidewalks and 1/6 of affordable units to be accessible Frey

All housing developments are subject to the state and federal Fair Housing Acts. There is no need to impose differential standards on 8-30g housing because it includes affordable units.

H.B. 6118 Requires excessive financial disclosures on financial impact of commission-imposed requirements Frey

The Act allows an applicant to appeal based upon the claim that requirements imposed on the development by the commission will have a substantial adverse impact on the financial viability of the development. This bill requires documentation of "the developer's financial status." If this merely means that the applicant must prove his claim of financial impact, that is already the law and the bill is unnecessary. In fact, in such a case, the burden of proof on financial impact is on the developer and is a condition of the appeal. If, however, the bill is intended to require that all the financial books of the applicant, on any matter, be opened to the commission, then it is an inappropriate and potentially harassing requirement and should be rejected.

H.B. 6124 Makes losing developer liable for town's attorney's fees Frey

H.B. 6293 Makes losing developer liable for town's attorney's fees Miller

In reality, non-meritorious appeals are more likely to be taken by the town than by the developer. Indeed, one way in which towns attempt to kill housing developments under 8-30g is by forcing litigation even when it is predictable that the developer will prevail, in the hope that delay will disrupt project financing and cause the applicant to drop the proposal. These bills are not reciprocal, i.e., they do not make the town liable for the applicant's attorney's fee if the applicant prevails. They are neither even-handed nor fair.

Bars application if town has affordability plan or zone

S.B. 443 Bars 8-30g applications in affordability zones Boucher

H.B. 5625 Exempts entirety of towns with affordability plans or zones Wood/Steinberg

Under the Incentive Housing Zone (IHZ) Act, 8-30g applications cannot be brought in IHZs. The substance of S.B. 443 is thus already the law. It should not, however, be extended to other parts of the town or to affordability zones which do not meet the IHZ standard. Those areas should properly be governed by the moratorium provisions of 8-30g, which provides a four-year moratorium on 8-30g applications if substantial amounts of housing with long-term restrictions are actually built and not merely planned or permitted. One of the strengths of 8-30g is that exemptions and moratoriums are based on actual production of units.

Imposes requirements to block density

H.B. 5067 Limits height to height of existing residential buildings Miller

The bill would effectively remove from the Act the entirety, or nearly the entirety, of the very towns which have the least affordable housing. Exclusionary zoning regulations typically restrict density by requiring large lots or low buildings and by restricting multi-family buildings, which are likely to be taller. Lower-cost housing requires greater density, which sometimes may require greater height than nearby buildings. Inappropriate height is already a factor than can be considered by the court in an 8-30g appeal, but this bill would make height an absolute rule of more importance

than health and safety questions.

H.B. 6121 Imposes two-acre zoning if any land in watershed Frey

C.G.S. 8-30g involves only the decisions of zoning or planning commissions. It cannot be used to appeal from a wetlands, conservation, or similar environmental commission, nor does it affect the issuance of required permits from state agencies, such as DEEP. Applications under the Act must meet the same standards as any other application to those entities. In addition, watershed protection can be considered by the court in an 8-30g appeal. If two-acre zoning is necessary to protect a watershed area, the municipality will be upheld.

Changes standard of review

H.B. 5315 Shifts burden of proof on harm, requires links to mass transit and commercial areas Shaban

The bill reverses the burden of proof of harm, which is the heart of 8-30g. The fundamental way in which the Act operates is to require the commission to justify its rejection of the application, which it can do on the basis of any matter that the commissioner can legally consider. In addition, the bill would unduly limit the areas in which housing under 8-30g can be built. It appears that it would prevent use of the Act at all in towns without mass transit and would restrict developments to commercial areas, even if little or no land is available there.

H.B. 6115 Itemizes additional factors to be considered by the court Moukawsher

All factors listed in the bill can already be considered by the court, and the bill is therefore unnecessary. The Act requires the court to balance the towns' need for affordable housing not only against the impact on health and safety but also on any "other matters which the commission may legally consider." The bill also attempts retroactively to apply the bill to pending appeals, which is inappropriate and probably impermissible.

H.B. 6117 Imposes non-zoning growth restrictions only of affordable developments Frey

The bill unduly restricts the location and design of 8-30g developments by requiring every such development to meet all growth standards that are actually guidelines (not requirements) for municipalities as a whole. The practical effect will be to prevent the use of 8-30g in the very towns that have the least affordable housing.

Miscellaneous

H.B. 5059 Penalties for non-compliance with deed restrictions Lavielle

H.B. 5501 Penalties for non-compliance with deed restrictions Wood

These bills are unnecessary because adequate sanctions are already part of the Act. In regard to ownership housing, the restrictions are self-enforcing. A lawyer must do a title search and is subject to significant liability if it is not done properly. If title insurance is required, title insurance companies will insist upon compliance. In regard to rental housing, the Year 2000 amendments require the applicant to designate an entity to administer the affordability plan and enforce the restrictions (housing authorities are often used). Annual income certification is required, and towns have the right to inspect occupant income statements. Moreover, violation of the restrictions is a violation of the town's zoning laws and subject to the enforcement provisions of C.G.S. 8-12, which include fines of up to $250 per day for wilful violations ($100 per day for other violations) and a $2,500 civil penalty. Enforcement mechanisms are clearly available to the towns.

Prepared by Raphael L. Podolsky, 2-14-13

Affordable Housing Land Use Appeals Procedure
Sec. 8-30g and Sec. 8-30h

(subsection titles inserted by Raphael L. Podolsky)

Sec. 8-30g. Affordable housing land use appeals procedure

Definitions: (a) As used in this section:

(1) **"Affordable housing development"** means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

(2) **"Affordable housing application"** means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing;

(3) **"Assisted housing"** means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code;

(4) **"Commission"** means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority;

(5) **"Municipality"** means any town, city or borough, whether consolidated or unconsolidated;

(6) **"Set-aside development"** means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income;

(7) **"Median income"** means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development; and

(8) **"Commissioner"** means the Commissioner of Economic and Community Development.

(b) (1) **Contents of affordability plans**: Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following:

(A) Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter;

(B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units;

(C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units;

(D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and

(E) draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

(2) **Affordability plan regulations**: The commissioner shall, within available appropriations, adopt regulations pursuant to chapter 54 regarding the affordability plan. Such regulations may include additional criteria for preparing an affordability plan and shall include:

(A) A formula for determining rent levels and sale prices, including establishing maximum allowable down payments to be used in the calculation of maximum allowable sales prices;

(B) a clarification of the costs that are to be included when calculating maximum allowed rents and sale prices;

(C) a clarification as to how family size and bedroom counts are to be equated in establishing maximum rental and sale prices for the affordable units; and

(D) a listing of the considerations to be included in the computation of income under this section.

(c) **Conceptual site plan**: Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply.

(d) **Maximum rents in set-aside developments limited to 100% or 120% of Section 8 fair market rents**: For any affordable dwelling unit that is rented as part of a set-aside development, if the maximum monthly housing cost, as calculated in accordance with subdivision (6) of subsection (a) of this section, would exceed one hundred per cent of the Section 8 fair market rent as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to sixty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred per cent of said Section 8 fair market rent. If the maximum monthly housing cost, as calculated in accordance with subdivision (6) of

subsection (a) of this section, would exceed one hundred twenty per cent of the Section 8 fair market rent, as determined by the United States Department of Housing and Urban Development, in the case of units set aside for persons and families whose income is less than or equal to eighty per cent of median income, then such maximum monthly housing cost shall not exceed one hundred twenty per cent of such Section 8 fair market rent.

(e) **Non-exclusion of Section 8 tenants**: For any affordable dwelling unit that is rented in order to comply with the requirements of a set-aside development, no person shall impose on a prospective tenant who is receiving governmental rental assistance a maximum percentage-of-income-for-housing requirement that is more restrictive than the requirement, if any, imposed by such governmental assistance program.

(f) **Procedure for filing affordable housing appeal**: Any person whose affordable housing application is denied or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units in a set-aside development, may appeal such decision pursuant to the procedures of this section. Such appeal shall be filed within the time period for filing appeals as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made returnable to the superior court for the judicial district where the real property which is the subject of the application is located. Affordable housing appeals, including pretrial motions, shall be heard by a judge assigned by the Chief Court Administrator to hear such appeals. To the extent practicable, efforts shall be made to assign such cases to a small number of judges, sitting in geographically diverse parts of the state, so that a consistent body of expertise can be developed. Unless otherwise ordered by the Chief Court Administrator, such appeals, including pretrial motions, shall be heard by such assigned judges in the judicial district in which such judge is sitting. Appeals taken pursuant to this subsection shall be privileged cases to be heard by the court as soon after the return day as is practicable. Except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable.

(g) **Burden of proof in affordable housing appeals**: Upon an appeal taken under subsection (f) of this section, the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that

(1) (A) the decision is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider;

(B) such public interests clearly outweigh the need for affordable housing; and

(C) such public interests cannot be protected by reasonable changes to the affordable housing development, or

(2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses, and

(B) the development is not assisted housing, as defined in subsection (a) of

this section.

If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

(h) **Right to submit modified application after initial denial**: Following a decision by a commission to reject an affordable housing application or to approve an application with restrictions which have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units, the applicant may, within the period for filing an appeal of such decision, submit to the commission a proposed modification of its proposal responding to some or all of the objections or restrictions articulated by the commission, which shall be treated as an amendment to the original proposal. The day of receipt of such a modification shall be determined in the same manner as the day of receipt is determined for an original application. The filing of such a proposed modification shall stay the period for filing an appeal from the decision of the commission on the original application. The commission shall hold a public hearing on the proposed modification if it held a public hearing on the original application and may hold a public hearing on the proposed modification if it did not hold a public hearing on the original application. The commission shall render a decision on the proposed modification not later than sixty-five days after the receipt of such proposed modification, provided, if, in connection with a modification submitted under this subsection, the applicant applies for a permit for an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by the commission on such modification under this subsection would lapse prior to the thirty-fifth day after a decision by an inland wetlands and watercourses agency, the time period for decision by the commission on the modification under this subsection shall be extended to thirty-five days after the decision of such agency. The commission shall issue notice of its decision as provided by law. Failure of the commission to render a decision within said sixty-five days or subsequent extension period permitted by this subsection shall constitute a rejection of the proposed modification. Within the time period for filing an appeal on the proposed modification as set forth in section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable, the applicant may appeal the commission's decision on the original application and the proposed modification in the manner set forth in this section. Nothing in this subsection shall be construed to limit the right of an applicant to appeal the original decision of the commission in the manner set forth in this section without submitting a proposed modification or to limit the issues which may be raised in any appeal under this section.

(i) **Applicability of other statutes**: Nothing in this section shall be deemed to preclude any right of appeal under the provisions of section 8-8, 8-9, 8-28, 8-30 or 8-30a.

(j) **Enforcement powers of commissions**: A commission or its designated authority shall have, with respect to compliance of an affordable housing development with the provisions of this chapter, the same powers and remedies provided to commissions by section 8-12.

(k) **Exclusion of municipalities heavily impacted by government- and deed-restricted housing**: Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be available if the real property which is the subject of the application is located in a

municipality in which at least ten per cent of all dwelling units in the municipality are

(1) assisted housing, or

(2) currently financed by Connecticut Housing Finance Authority mortgages, or

(3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, or

(4) mobile manufactured homes located in mobile manufactured home parks or legally-approved accessory apartments, which homes or apartments are subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income.

The Commissioner of Economic and Community Development shall, pursuant to regulations adopted under the provisions of chapter 54, promulgate a list of municipalities which satisfy the criteria contained in this subsection and shall update such list not less than annually. For the purpose of determining the percentage required by this subsection, the commissioner shall use as the denominator the number of dwelling units in the municipality, as reported in the most recent United States decennial census. As used in this subsection, "accessory apartment" means a separate living unit that (A) is attached to the main living unit of a house, which house has the external appearance of a single-family residence, (B) has a full kitchen, (C) has a square footage that is not more than thirty per cent of the total square footage of the house, (D) has an internal doorway connecting to the main living unit of the house, (E) is not billed separately from such main living unit for utilities, and (F) complies with the building code and health and safety regulations.

(l) **Moratorium provisions**:

(1) **Exclusion of municipalities during a moratorium**: Notwithstanding the provisions of subsections (a) to (j), inclusive, of this section, the affordable housing appeals procedure established under this section shall not be applicable to an affordable housing application filed with a commission during a moratorium, which shall be the four-year period after (A) a certification of affordable housing project completion issued by the commissioner is published in the Connecticut Law Journal, or (B) after notice of a provisional approval is published pursuant to subdivision (4) of this subsection. Any moratorium that is in effect on October 1, 2002, is extended by one year.

(2) **Applications submittable during a moratorium**: Notwithstanding the provisions of this subsection, such moratorium shall not apply to (A) affordable housing applications for assisted housing in which ninety-five per cent of the dwelling units are restricted to persons and families whose income is less than or equal to sixty per cent of median income, (B) other affordable housing applications for assisted housing containing forty or fewer dwelling units, or (C) affordable housing applications which were filed with a commission pursuant to this section prior to the date upon which the moratorium takes effect.

(3) **Units eligible to be counted in second moratorium**: Eligible units completed after a moratorium has begun may be counted toward establishing eligibility for a subsequent moratorium.

(4) **Application for a moratorium**:

(A) **Minimum number of housing unit-equivalent points for a moratorium**: The commissioner shall issue a certificate of affordable housing project completion for the purposes of this subsection upon finding that there has been completed within the municipality one or more affordable housing developments which create housing unit-equivalent points equal to the greater of two per cent of all dwelling units in the municipality, as reported in the most recent United States decennial census, or seventy-five housing unit-equivalent points.

(B) **Procedure for applying for a moratorium**: A municipality may apply for a certificate of affordable housing project completion pursuant to this subsection by applying in writing to the commissioner, and including documentation showing that the municipality has accumulated the required number of points within the applicable time period. Such documentation shall include the location of each dwelling unit being counted, the number of points each dwelling unit has been assigned, and the reason, pursuant to this subsection, for assigning such points to such dwelling unit. Upon receipt of such application, the commissioner shall promptly cause a notice of the filing of the application to be published in the Connecticut Law Journal, stating that public comment on such application shall be accepted by the commissioner for a period of thirty days after the publication of such notice. Not later than ninety days after the receipt of such application, the commissioner shall either approve or reject such application. Such approval or rejection shall be accompanied by a written statement of the reasons for approval or rejection, pursuant to the provisions of this subsection. If the application is approved, the commissioner shall promptly cause a certificate of affordable housing project completion to be published in the Connecticut Law Journal. If the commissioner fails to either approve or reject the application within such ninety-day period, such application shall be deemed provisionally approved, and the municipality may cause notice of such provisional approval to be published in a conspicuous manner in a daily newspaper having general circulation in the municipality, in which case, such moratorium shall take effect upon such publication. The municipality shall send a copy of such notice to the commissioner. Such provisional approval shall remain in effect unless the commissioner subsequently acts upon and rejects the application, in which case the moratorium shall terminate upon notice to the municipality by the commissioner.

(5) **"Elderly" and "family" units defined**: For purposes of this subsection, "elderly units" are dwelling units whose occupancy is restricted by age and "family units" are dwelling units whose occupancy is not restricted by age.

(6) **Determination of housing unit-equivalent points**: For purposes of this subsection, housing unit-equivalent points shall be determined by the commissioner as follows:

(A) No points shall be awarded for a unit unless its occupancy is restricted to persons and families whose income is equal to or less than eighty per cent of median income, except that unrestricted units in a set-aside development shall be awarded one-fourth point each.

(B) Family units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one point if an ownership unit and one and one-half points if a rental unit.

(C) Family units restricted to persons and families whose income is equal to or less than sixty per cent of median income shall be awarded one and one-half points if an ownership unit and two points if a rental unit.

(D) Family units restricted to persons and families whose income is equal to or less than forty per cent of median income shall be awarded two points if an ownership unit and two and one-half points if a rental unit.

(E) Elderly units restricted to persons and families whose income is equal to or less than eighty per cent of median income shall be awarded one-half point.

(F) A set-aside development containing family units which are rental units shall be awarded additional points equal to twenty-two per cent of the total points awarded to such development, provided the application for such development was filed with the commission prior to July 6, 1995.

(7) **Eligible units:** Points shall be awarded only for dwelling units which were (A) newly-constructed units in an affordable housing development, as that term was defined at the time of the affordable housing application, for which a certificate of occupancy was issued after July 1, 1990, or (B) newly subjected after July 1, 1990, to deeds containing covenants or restrictions which require that, for at least the duration required by subsection (a) of this section for set-aside developments on the date when such covenants or restrictions took effect, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing for persons or families whose income does not exceed eighty per cent of median income.

(8) **Units lost as affordable housing units:** Points shall be subtracted, applying the formula in subdivision (6) of this subsection, for any affordable dwelling unit which, on or after July 1, 1990, was affected by any action taken by a municipality which caused such dwelling unit to cease being counted as an affordable dwelling unit.

(9) **Completion of units:** A newly-constructed unit shall be counted toward a moratorium when it receives a certificate of occupancy. A newly-restricted unit shall be counted toward a moratorium when its deed restriction takes effect.

(10) **Expiration of moratorium:** The affordable housing appeals procedure shall be applicable to affordable housing applications filed with a commission after a four-year moratorium expires, except (A) as otherwise provided in subsection (k) of this section, or (B) when sufficient unit-equivalent points have been created within the municipality during one moratorium to qualify for a subsequent moratorium.

(11) **Moratorium regulations:** The commissioner shall, within available appropriations, adopt regulations in accordance with chapter 54 to carry out the purposes of this subsection. Such regulations shall specify the procedure to be followed by a municipality to obtain a moratorium, and shall include the manner in which a municipality is to document the units to be counted toward a moratorium. A municipality may apply for a moratorium in accordance with the provisions of this subsection prior to, as well as after, such regulations are adopted.

(m) **Model deed restrictions**: The commissioner shall, pursuant to regulations adopted in accordance with the provisions of chapter 54, promulgate model deed restrictions which satisfy the requirements of this section. A municipality may waive any fee which would otherwise be required for the filing of any long-term affordability deed restriction on the land records.

Sec. 8-30h. Annual certification of continuing compliance with affordability requirements; noncompliance

On and after January 1, 1996, the developer, owner or manager of an affordable housing development, developed pursuant to subparagraph (B) of subdivision (1) of subsection (a) of section 8-30g, that includes rental units shall provide annual certification to the commission that the development continues to be in compliance with the covenants and deed restrictions required under said section. If the development does not comply with such covenants and deed restrictions, the developer, owner or manager shall rent the next available units to persons and families whose incomes satisfy the requirements of the covenants and deed restrictions until the development is in compliance. The commission may inspect the income statements of the tenants of the restricted units upon which the developer, owner or manager bases the certification. Such tenant statements shall be confidential and shall not be deemed public records for the purposes of the Freedom of Information Act, as defined in section 1-200.

2011 Affordable Housing Appeals List

2011 Affordable Housing Appeals List - Exempt Municipalities								
	Town	Total Housing Units 2010 Census	Governmentally Assisted Units	Tenant Rental Assistance	CHFA/USDA Mortgages	Deed Restricted Units	Total Assisted Units	Percent Affordable
1	Ansonia	8,148	372	699	106	9	1,186	14.56%
2	Bloomfield	9,019	584	147	295	0	1,026	11.38%
3	Bridgeport	57,012	5604	3724	964	15	10,307	18.08%
4	Bristol	27,011	1771	791	1014	0	3,576	13.24%
5	Derby	5,849	259	305	63	0	627	10.72%
6	East Hartford	21,328	1577	835	908	0	3,320	15.57%
7	East Windsor	5,045	558	27	92	14	691	13.70%
8	Enfield	17,558	1340	215	546	7	2,108	12.01%
9	Groton	17,978	3267	56	337	10	3,670	20.41%
10	Hartford	51,822	9415	7577	1440	0	18,432	35.57%
11	Killingly	7,592	530	124	251	0	905	11.92%
12	Manchester	25,996	1813	1011	883	36	3,743	14.40%
13	Mansfield	6,017	417	159	76	2	654	10.87%
14	Meriden	25,892	1769	970	1022	11	3,772	14.57%
15	Middletown	21,223	2814	1295	590	25	4,724	22.26%
16	New Britain	31,226	3183	1457	1153	396	6,189	19.82%
17	New Haven	54,967	8210	6116	1127	487	15,940	29.00%
18	New London	11,840	1672	155	457	69	2,353	19.87%
19	Norwalk	35,415	2248	982	238	559	4,027	11.37%
20	Norwich	18,659	1906	707	517	0	3,130	16.77%
21	Plainfield	6,229	378	225	261	0	864	13.87%
22	Putnam	4,299	383	64	101	0	548	12.75%
23	Stamford	50,573	4618	1645	309	1221	7,793	15.41%
24	Torrington	16,761	1082	301	611	17	2,011	12.00%
25	Vernon	13,896	1386	519	352	12	2,269	16.33%
26	Waterbury	47,991	4870	3110	2256	333	10,569	22.02%
27	West Haven	22,446	1024	1380	415	0	2,819	12.56%
28	Winchester	5,613	316	248	116	0	680	12.11%
29	Windham	9,570	1692	560	427	0	2,679	27.99%

2011 Affordable Housing Appeals List

2011 Affordable Housing Appeals List - Non-Exempt Municipalities								
	Town	Total Housing Units 2010 Census	Governmentally Assisted Units	Tenant Rental Assistance	CHFA/USDA Mortgages	Deed Restricted Units	Total Assisted Units	Percent Affordable
30	Andover	1,317	24	1	20	0	45	3.42%
31	Ashford	1,903	32	1	35	0	68	3.57%
32	Avon	7,389	240	5	21	0	266	3.60%
33	Barkhamsted	1,589	0	3	11	0	14	0.88%
34	Beacon Falls	2,509	0	6	25	0	31	1.24%
35	Berlin	8,140	468	30	82	6	586	7.20%
36	Bethany	2,044	0	0	1	0	1	0.05%
37	Bethel	7,310	250	9	57	63	379	5.18%
38	Bethlehem	1,575	24	0	0	0	24	1.52%
39	Bolton	2,015	0	3	15	0	18	0.89%
40	Bozrah	1,059	0	4	16	0	20	1.89%
41	Branford	13,972	232	46	174	0	452	3.24%
42	Bridgewater	881	0	0	2	0	2	0.23%
43	Brookfield	6,562	35	6	38	52	131	2.00%
44	Brooklyn	3,235	233	9	63	0	305	9.43%
45	Burlington	3,389	28	0	25	0	53	1.56%
46	Canaan	779	25	0	9	1	35	4.49%
47	Canterbury	2,043	76	1	31	0	108	5.29%
48	Canton	4,339	211	20	52	32	315	7.26%
49	Chaplin	988	0	1	23	0	24	2.43%
50	Cheshire	10,424	237	5	70	17	329	3.16%
51	Chester	1,923	23	2	9	0	34	1.77%
52	Clinton	6,065	84	5	42	0	131	2.16%
53	Colchester	6,182	364	26	84	0	474	7.67%
54	Colebrook	722	0	0	7	1	8	1.11%
55	Columbia	2,308	24	4	37	0	65	2.82%
56	Cornwall	1,007	18	0	0	0	18	1.79%
57	Coventry	5,099	104	5	116	20	245	4.80%
58	Cromwell	6,001	212	6	199	0	417	6.95%
59	Danbury	31,154	1632	876	315	223	3,046	9.78%
60	Darien	7,074	83	8	1	93	185	2.62%
61	Deep River	2,096	26	4	22	0	52	2.48%
62	Durham	2,694	33	1	11	0	45	1.67%
63	East Granby	2,152	72	1	30	0	103	4.79%
64	East Haddam	4,508	73	3	27	1	104	2.31%
65	East Hampton	5,485	70	1	69	25	165	3.01%
66	East Haven	12,533	421	254	294	0	969	7.73%
67	East Lyme	8,458	342	61	78	10	491	5.81%
68	Eastford	793	0	0	16	0	16	2.02%
69	Easton	2,715	0	33	0	11	44	1.62%
70	Ellington	6,665	260	6	69	0	335	5.03%
71	Essex	3,261	36	4	8	0	48	1.47%
72	Fairfield	21,648	241	182	29	117	569	2.63%
73	Farmington	11,106	456	110	117	154	837	7.54%
74	Franklin	771	0	1	15	0	16	2.08%
75	Glastonbury	13,656	582	49	122	0	753	5.51%
76	Goshen	1,664	1	1	5	0	7	0.42%
77	Granby	4,360	85	1	34	5	125	2.87%
78	Greenwich	25,631	837	359	2	54	1,252	4.88%
79	Griswold	5,118	136	42	140	0	318	6.21%
80	Guilford	9,596	168	5	28	0	201	2.09%
81	Haddam	3,504	22	1	14	0	37	1.06%
82	Hamden	25,114	684	514	448	4	1,650	6.57%

2011 Affordable Housing Appeals List

2011 Affordable Housing Appeals List - Non-Exempt Municipalities

	Town	Total Housing Units 2010 Census	Governmentally Assisted Units	Tenant Rental Assistance	CHFA/USDA Mortgages	Deed Restricted Units	Total Assisted Units	Percent Affordable
83	Hampton	793	0	0	16	0	16	2.02%
84	Hartland	856	2	0	4	0	6	0.70%
85	Harwinton	2,282	23	1	21	0	45	1.97%
86	Hebron	3,567	59	3	30	0	92	2.58%
87	Kent	1,665	48	1	4	24	77	4.62%
88	Killingworth	2,598	0	1	5	5	11	0.42%
89	Lebanon	3,125	26	5	47	0	78	2.50%
90	Ledyard	5,987	32	7	158	0	197	3.29%
91	Lisbon	1,730	2	0	35	0	37	2.14%
92	Litchfield	3,975	140	2	11	29	182	4.58%
93	Lyme	1,223	0	0	2	7	9	0.74%
94	Madison	8,049	90	1	7	29	127	1.58%
95	Marlborough	2,389	24	0	16	0	40	1.67%
96	Middlebury	2,892	76	3	8	8	95	3.28%
97	Middlefield	1,863	30	0	10	1	41	2.20%
98	Milford	29,074	822	285	212	85	1,404	6.08%
99	Monroe	6,918	35	1	18	1	55	0.80%
100	Montville	7,407	81	30	177	0	288	3.89%
101	Morris	1,314	20	2	0	0	22	1.67%
102	Naugatuck	13,061	492	273	301	0	1,066	8.16%
103	New Canaan	7,551	140	10	2	31	183	2.42%
104	New Fairfield	5,593	0	0	22	13	35	0.63%
105	New Hartford	2,923	12	0	36	15	63	2.16%
106	New Milford	11,731	233	221	107	16	577	4.92%
107	Newington	13,011	426	84	366	36	912	7.01%
108	Newtown	10,061	134	4	20	15	173	1.72%
109	Norfolk	967	28	0	3	0	31	3.21%
110	North Branford	5,629	62	8	52	0	122	2.17%
111	North Canaan	1,587	101	0	7	0	108	6.81%
112	North Haven	9,491	343	29	74	1	447	4.71%
113	North	2,306	0	1	17	0	18	0.78%
114	Old Lyme	5,021	60	1	5	3	69	1.37%
115	Old Saybrook	5,602	50	5	15	1	71	1.27%
116	Orange	5,345	46	4	9	0	59	1.10%
117	Oxford	4,746	36	1	8	0	45	0.95%
118	Plainville	8,063	223	24	302	53	602	7.47%
119	Plymouth	5,109	179	5	142	0	326	6.38%
120	Pomfret	1,684	32	2	11	0	45	2.67%
121	Portland	4,077	185	91	48	0	324	7.95%
122	Preston	2,019	40	3	34	0	77	3.81%
123	Prospect	3,474	0	4	22	0	26	0.75%
124	Redding	3,811	0	0	0	0	0	0.00%
125	Ridgefield	9,420	179	0	8	20	207	2.20%
126	Rocky Hill	8,843	236	23	173	0	432	4.89%
127	Roxbury	1,167	19	0	1	0	20	1.71%
128	Salem	1,635	1	0	25	0	26	1.59%
129	Salisbury	2,593	16	0	4	10	30	1.16%
130	Scotland	680	0	0	9	0	9	1.32%
131	Seymour	6,968	262	25	83	0	370	5.31%
132	Sharon	1,775	20	1	4	0	25	1.41%
133	Shelton	16,146	254	16	83	82	435	2.69%
134	Sherman	1,831	0	1	1	0	2	0.11%
135	Simsbury	9,123	241	12	58	0	311	3.41%

2011 Affordable Housing Appeals List

2011 Affordable Housing Appeals List - Non-Exempt Municipalities								
	Town	Total Housing Units 2010 Census	Governmentally Assisted Units *	Tenant Rental Assistance	CHFA/USDA Mortgages	Deed Restricted Units	Total Assisted Units	Percent Affordable
136	Somers	3,479	54	7	16	0	77	2.21%
137	South Windsor	10,243	427	53	235	0	715	6.98%
138	Southbury	9,091	89	2	12	0	103	1.13%
139	Southington	17,447	609	41	281	51	982	5.63%
140	Sprague	1,248	20	9	30	0	59	4.73%
141	Stafford	5,124	178	12	140	0	330	6.44%
142	Sterling	1,511	0	3	21	9	33	2.18%
143	Stonington	9,467	296	16	49	0	361	3.81%
144	Stratford	21,091	524	365	259	33	1,181	5.60%
145	Suffield	5,469	212	0	41	15	268	4.90%
146	Thomaston	3,276	105	3	83	0	191	5.83%
147	Thompson	4,171	150	12	54	0	216	5.18%
148	Tolland	5,451	97	2	69	3	171	3.14%
149	Trumbull	13,157	315	13	35	274	637	4.84%
150	Union	388	0	0	6	0	6	1.55%
151	Voluntown	1,127	20	2	21	0	43	3.82%
152	Wallingford	18,945	482	141	299	35	957	5.05%
153	Warren	811	0	0	2	0	2	0.25%
154	Washington	2,124	14	0	0	23	37	1.74%
155	Waterford	8,634	123	13	192	0	328	3.80%
156	Watertown	9,096	206	19	134	0	359	3.95%
157	West Hartford	26,396	541	942	304	282	2,069	7.84%
158	Westbrook	3,937	140	7	13	24	184	4.67%
159	Weston	3,674	0	1	0	0	1	0.03%
160	Westport	10,399	245	20	2	15	282	2.71%
161	Wethersfield	11,677	625	127	216	0	968	8.29%
162	Willington	2,637	160	4	32	0	196	7.43%
163	Wilton	6,475	84	4	7	70	165	2.55%
164	Windsor	11,767	154	245	379	0	778	6.61%
165	Windsor Locks	5,429	137	149	182	0	468	8.62%
166	Wolcott	6,276	312	4	121	0	437	6.96%
167	Woodbridge	3,478	30	5	6	0	41	1.18%
168	Woodbury	4,564	60	4	19	0	83	1.82%
169	Woodstock	3,582	24	3	39	0	66	1.84%
	Total - All	1,487,891	86,255	41,537	26,217	5,431	159,440	10.72%

* Includes units developed or assisted by CHFA, DECD, HUD, USDA or other governmental housing program